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Paper No. 18

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OFFICE OF PETITIONS

DECISION ACCORDING STATUS
UNDER 37 CFR § 1.47(a)

In re Application of
Reginald Wayne Clark,
James C. Lierman, Donald Lander
and Joseph E. Dunn
Application No. 09/326,168
Filed: June 4, 1999
Title: PARAMETRIC CONTROL IN PULSED
LIGHT STERILIZATION

This is a decision on the petition under 37 CFR 1.47, filed November 12, 1999. This petition was considered in light of the supplemental evidence filed March 19, 2003. The petition was recently forwarded to the Office of Petitions for consideration.

The petition is GRANTED.

The above-identified application was filed on June 4, 1999, with an unexecuted declaration. Reginald Wayne Clark, James C. Lierman, Donald Lander and Joseph E. Dunn were named as joint inventors. Accordingly, on July 7, 1999, applicants were mailed a "Notice to File Missing Parts of Nonprovisional Application," requiring *inter alia* an executed oath or declaration and a surcharge for its late filing. This Notice set a period for reply of two months from the mailing date of the notice, with extensions of time obtainable under § 1.136(a).

On November 12, 1999 (certificate of mailing November 8, 1999), applicants responded with a declaration executed by joint inventors Clark, Lierman and Lander on behalf of themselves and on behalf of non-signing inventor Dunn; the late surcharge under former § 1.16(e); and the instant petition (and petition fee). This reply was made timely by an accompanying petition and fee for an extension of time for response within the second month.

Rule 47 applicants maintain that status under 37 CFR 1.47 is proper because joint inventor Dunn refuses to join in the application for patent. A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

By statement of facts of Carrie Merzbacher and supporting documentary evidence, petitioner has shown that inventor Dunn has

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refused to join in the application after having been presented with the application papers. Petitioner has provided a copy of the cover letter showing transmittal of the application papers to inventor Dunn on August 13, 1999. Further, by her statement, Ms. Merzbacher details a subsequent telephone conversation in which Dr. Dunn orally refused to join in the application.

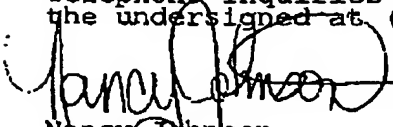
The declaration filed November 12, 1999 (certificate of mailing November 8, 1999), and the petition have been reviewed and found in compliance with 37 CFR 1.47(a).

This application is hereby accorded Rule 1.47(a) status.

As provided in new Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being returned to the Publishing Division for processing into a patent¹.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0309.


Nancy Johnson
Petitions Attorney
Office of Petitions

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¹ Prosecution of this application occurred prior to a decision being rendered on the petition under § 1.47.